KEYWORD: Drugs; Personal Conduct

DIGEST: Applicant used marijuana, cocaine, psilocybin, psilocyn, methamphetamine, lysergic acid diethylamide, and/or phencyclidine on diverse occasions for more than 20 years. He also sold small amounts of marijuana and cocaine. He falsified his 2003 security clearance application to conceal his cocaine use from his employer and the government. He failed to mitigate security concerns pertaining to his drug involvement and personal conduct. Clearance is denied.

CASENO: 05-11090.h1

DATE: 05/23/2007

DATE: May 23, 2007

In re:	)	
	)	
----------	)	ISCR Case No. 05-11090
SSN: ----------	)	
	)	
Applicant for Security Clearance	)	

DECISION OF ADMINISTRATIVE JUDGE
MARK W. HARVEY

APPEARANCES

FOR GOVERNMENT
Caroline H. Jeffreys, Esq., Department Counsel

FOR APPLICANT
Pro Se

SYNOPSIS

Applicant used marijuana, cocaine, psilocybin, psilocyn, methamphetamine, lysergic acid diethylamide, and/or phencyclidine on diverse occasions for more than 20 years. He also sold small amounts of marijuana and cocaine. He falsified his 2003 security clearance application to conceal his cocaine use from his employer and the government. He failed to mitigate security concerns pertaining to his drug involvement and personal conduct. Clearance is denied.

STATEMENT OF THE CASE

On October 20, 2003, Applicant applied for a security clearance and submitted a Security Clearance Application (SF 86).[1] On August 30, 2006,[2] the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, under Executive Order 10865, *Safeguarding Classified Information Within Industry,* dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified.[3] The SOR alleges security concerns under Guideline H (Drug Involvement) and Guideline E (Personal Conduct). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In an answer notarized on September 22, 2006, Applicant responded to the SOR allegations, and elected to have his case decided on the written record in lieu of a hearing.[4] A complete copy of the file of relevant material (FORM), dated January 19, 2006, was provided to him on February 4, 2007, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation.[5] His

[1]Item 5 (Electronic Questionnaires for Investigations Processing (e-QIP) for Security Clearance Application is dated October 20, 2003, on the signature page). For convenience, the security clearance application in this decision will be called an SF 86. There is an allegation of falsification of the 2003 SF 86.

[2]On August 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guideline to all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated January 1987, as amended, in which the SOR was issued on or after September 1, 2006. Even if the revised Adjudicative Guidelines were in effect, my ultimate decision would be the same.

[3]Item 1 (Statement of Reasons (SOR), dated August 30, 2006) at 1-2. Item 1 is the source for the remainder of this paragraph.

[4]Item 4 (Applicant's response to SOR, dated September 22, 2006).

[5]Defense Office of Hearings and Appeals (DOHA) transmittal letter, dated January 29, 2007. Applicant signed the receipt on February 4, 2007.

submissions were due by March 6, 2007, but he did not submit any additional information.[6] The case was assigned to me on April 9, 2007.

Procedural Issue

A National Security Agency (NSA) clearance decision statement, dated October 7, 2004, is included in the file as Item 7. This statement describes an NSA interview on July 20, 2004, wherein Applicant evidently admitted more extensive and recent illegal drug use than is contained in the other exhibits I received. This July 20, 2004, NSA interview is not in my file. I have decided not to give any evidentiary weight to Item 7.

FINDINGS OF FACT

As to the factual allegations, Applicant admitted use of marijuana, cocaine, PCP, LSD, Speed, as well as sale of marijuana and cocaine.[7] He also admitted that he failed to provide complete information about his drug involvement on his 2003 SF 86.[8] His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, and upon due consideration of same, I make the following findings of fact:

Applicant is a 48-year-old employee of a defense contractor.[9] From 1983 to 1986, he attended a university, and he was awarded a bachelor of science degree. He has no prior military service. Applicant is married, however, he is separated from his spouse. He has twin sons who were born in 1992.

Drug Involvement

When Applicant was 16 or 17, he was arrested for possessing or using marijuana.[10] He attended a court-ordered drug education class. He has not received any other drug counseling.

During Applicant's high school years from 1973 to 1977, he used marijuana once or twice a week with friends at parties. He also used LSD and mushrooms five to six

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[6] *Id*. The DOHA transmittal letter informed Applicant that he had 30 days after receipt to submit information.

[7] Speed, LSD, PCP and mushrooms are essentially street names for methamphetamine, lysergic acid diethylamide, phencyclidine, and psilocybin or psilocyn respectively. *See* 21 U.S.C. § 841(b)(1) (PCP and LSD); *Neal v. United States*, 516 U.S. 284, 286 (1996)(LSD); *Hampton v. United States*, 425 U.S. 484, 492 (1976) (Speed); United States v. Hussein, 351 F.3d 9, 16 (1st Cir. 2003) (mushrooms are a plant which may contain the Schedule I controlled substance psilocybin or psilocyn).

[8] Item 4, *supra* note 4, is the source for all factual assertions in this paragraph.

[9] Item 5, *supra* note 1, at Sections 1 (date of birth), 5 (education), 6 (employment), 8 (spouse), 9 (relatives), and 11 (military service) is the source for the facts in this paragraph, unless otherwise stated.

[10] Unless stated otherwise, the source for the facts in this section is Applicant's affidavit to a Special Investigator of the Office of Personnel Management on April 19, 2006. Applicant noted that details concerning the numbers of times he used drugs and the dates of use may vary from previous statements, and such details were difficult for him to recall.

times each, and Speed once or twice with friends. He did not recall using LSD or mushrooms after high school.

During his college years from 1977 to 1982, Applicant used marijuana on the weekends. He also used PCP and cocaine three times per year. From 1983 to 1986, Applicant attended a university away from home. He used marijuana and cocaine on the weekends and during summer breaks when he returned home. He did not remember how often or how much of these drugs he used. He did not remember using PCP, LSD or Speed during those years.

From 1986 to 1992, Applicant's marijuana use was two or three times per year, and his cocaine use was six times per year. He was employed and could afford more cocaine. Thereafter, he continued to use cocaine sporadically, with his last cocaine use occurring in the Summer of 2002.

From 2000 to 2003, Applicant had a medical problem and received a prescription for percocet. He used percocet when the pain was not severe "to feel the high that it gives." *Id*. at 4.

When he was using drugs, generally he purchased a quantity and then would use half and sell the other half. Sometimes he would share drugs with friends without selling it to them.

In both his April and September 2006 statements, Applicant said he did not intend to use drugs in the future because he had too much to lose, and now "leads a faith based life." He noted a dramatic change in his life and his reliance on religion for support. However, his response to the SOR included the comment, "I have not abused [drugs] since approximately 2000-2001 time frame," which was inconsistent with April 2006 statement about ending his cocaine use in the summer of 2002.

Personal Conduct

Question 27 of Applicant's October 20, 2003, security clearance application asks, "Since the age of 16 or in the last seven years, whichever is shorter, have you illegally used a controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), amphetamines, depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.), or prescription drugs?" Applicant answered, "No."

He did not include any cocaine use that occurred from October 1996 until Summer 2002, even though his use of a controlled substance was in the last seven years before signing his SF 86.

In his statement to a Special Investigator of the Office of Personnel Management (Item 6 at 6), Applicant said:

> I did not list my drug use on my SF 86 because I felt rushed filling it out and I was afraid that my current employer would find out. In addition, I feared that I would not

> get hired or not get a clearance. I was not purposely trying to be deceitful, and am remorseful. I do not feel that this information could be used to blackmail or coerce me.

In his response to the SOR (Item 4 at 1-2), Applicant provided an explanation for his incorrect answer:

> I deny–I did not deliberately and intentionally falsify material facts when I filled out the application. At the time the application was submitted I had one day to fill it out and get it back to my prospective employer so I rushed through the application. So I did not give my drug history much thought nor did I feel that I had ample time to ponder it. However, I did clarify the fact that there was an abuse within the last seven years after the application was submitted.

POLICIES

In an evaluation of an applicant's eligibility for a security clearance, an administrative judge must consider Enclosure 2 of the Directive, which sets forth adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into Disqualifying Conditions and Mitigating Conditions, which are used to determine an applicant's eligibility for access to classified information.

These adjudicative guidelines are not inflexible ironclad rules of law. Instead, recognizing the complexities of human behavior, an administrative judge should apply these guidelines in conjunction with the factors listed in the adjudicative process provision in Section E2.2, Enclosure 2, of the Directive. An administrative judge's overarching adjudicative goal is a fair, impartial and common sense decision. Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," an administrative judge should consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

Specifically, an administrative judge should consider the nine adjudicative process factors listed at Directive ¶ E2.2.1: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Since the protection of the national security is the paramount consideration, the final decision in each case is arrived at by applying the standard that the issuance of the clearance is "clearly consistent with the interests of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, the Government has the initial burden of establishing facts by "substantial evidence,"[11] demonstrating, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to produce evidence "to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).[12]

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

The scope of an administrative judge's decision is limited. Nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. Executive Order 10865, § 7.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to the allegations set forth in the SOR:

Drug Involvement

Under Guideline H, "[i]mproper or illegal involvement with drugs raises questions regarding an individual's willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information." Directive ¶ E2.A8.1.1.

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[11] "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge's] finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620 (1966). "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v.Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

[12] "The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant's past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15." ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

Three drug involvement disqualifying conditions (DI DC) are pertinent to security concerns:

> DI DC 1: Any drug abuse.
>
> DI DC 2: Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution.[13]
>
> DI DC 3: Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

Directive ¶¶ E2.A8.1.2.1 to E2.A8.1.2.3.

DI DC 1 applies because Applicant used marijuana, cocaine, methamphetamine, lysergic acid diethylamide, phencyclidine, and/or psilocybin or psilocyn. DIDC 2 applies because he possessed and sold illegal drugs.

In regard to SOR ¶ 1.h, DI DC 3 does not apply because there is insufficient evidence that Applicant's percocet use deviated from approved medical direction. There is no evidence that a medical professional told Applicant not to take percocet unless he was suffering severe pain.

Security concerns based on DI DCs 1 and 2 can be mitigated by showing that the drug offenses were not recent (DI MC 1).[14] Directive ¶ E2.A8.1.3.1. There are no "bright line" rules for determining when conduct is "recent." The determination must be based "on a careful evaluation of the totality of the record within the parameters set by the directive." ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). If the evidence shows "a significant period of time has passed without any evidence of misconduct," then an administrative judge must determine whether that period of time demonstrates "changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation." *Id*. DI MC 1 does not apply because Applicant's last cocaine use was in the Summer of 2002.[15] He receives some credit for not using drugs for almost five years, however, his overall drug abuse was so significant and long lasting, that the recency mitigating condition is not fully

[13]"Drugs are defined as mood and behavior-altering substances, and include: Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens); and Inhalants and other similar substances." Directive ¶¶ E2.A8.1.1.2.1 and E2.A8.1.1.2.2.

[14] "Recent drug involvement" also is addressed as a disqualifying condition (DI DC 5) in the Directive ¶ E2.A8.1.2.5. This disqualifying condition applies only in the context of failure to successfully complete a drug treatment program. ISCR Case No. 02-24452 at 3 (App. Bd. Aug. 4, 2004).

[15]In ISCR Case No. 05-11392 at 1-3 (App. Bd. Dec. 11, 2006) the Appeal Board, considered the recency analysis of an Administrative Judge, who held a hearing on July 31, 2006, stating:

> The Administrative Judge made sustainable findings as to a lengthy and serious history of improper or illegal drug use by a 57-year-old Applicant who was familiar with the security clearance process. That history included illegal marijuana use two to three times a year from 1974 to 2002. It also included the illegal purchase of marijuana and the use of marijuana while holding a security clearance.

Although Applicant did not abuse drugs while holding a security clearance, Applicant's illegal drug use was much more extensive than the Applicant in ISCR Case No. 05-11392.

applicable.

Drug involvement security concerns may be mitigated under DI MC 2 when the "drug involvement was an isolated or aberrational event." Directive ¶ E2.A8.1.3.2. DI MC 2 does not apply because applicant used drugs on numerous occasions for more than 20 years.

For DI MC 3, security concerns pertaining to drug involvement may be mitigated by a "demonstrated intent not to abuse any drugs in the future." Directive ¶ E2.A8.1.3.3. Applicant stated he made a dramatic change in his lifestyle, and that he has turned to religion for support and guidance. He receives some credit under DI MC 3 for these positive changes, however, Applicant has not shown or demonstrated a sufficient track record of no drug abuse. Morever, his failure to present readily available corroboration about his rehabilitation from co-workers, neighbors, family and friends is an important factor in this decision.[16] DI MC 3 does not apply.

In regard to DI MC 4, security concerns may be mitigated when an applicant has satisfactorily completed "a prescribed drug treatment program, including rehabilitation and aftercare requirements, without recurrence of abuse, and [after receiving] a favorable prognosis by a credentialed medical professional." Directive ¶ E2.A8.1.3.4. DI MC 4 does not apply because Applicant has not completed a prescribed drug treatment program.

Although his eventual admission that he used many illegal drugs on numerous occasions over many years was not prompt, he deserves some credit under the "whole person" concept for eventually providing accurate information. *See* ISCR Case No. 04-07360 at 2, 3 (App. Bd. Sep. 26, 2006) (indicating when a mitigating condition cannot be fully applied, "some credit" is still available under that same mitigating condition).

Personal Conduct

Under Guideline E, "[c]onduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that applicant may not properly safeguard classified information." Directive ¶ E2.A5.l.l.

Two personal conduct disqualifying conditions (PC DC) could raise a security concern and may be disqualifying in this case. PC DC 2 applies where there has been "deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine

[16]Administrative judges "must look at the record for corroboration of Applicant's testimony." ISCR Case 02-03186 at 3 (App. Bd. Feb. 16, 2006). Moreover, a judge may consider "Applicant's failure to present documentary evidence in corroboration of his denials and explanations." ISCR Case 01-20579 at 5 (App. Bd. Apr. 14, 2004) (holding Applicant's failure to provide reasonably available corroborative evidence may be used in common sense evaluation to determine whether Applicant's claims are established). In ISCR Case 01-02677 at 7 (App. Bd. Oct. 17, 2002), the Appeal Board explained:

> While lack of corroboration can be a factor in evaluating the reliability or weight of evidence, lack of corroboration does not automatically render a piece of evidence suspect, unreliable, or incredible. . . . Evidence that lacks corroboration must be evaluated in terms of its intrinsic believability and in light of all the other evidence of record, including evidence that tends to support it as well as evidence that tends to detract from it.

employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities." Directive ¶ E2.A5.1.2.2. A security concern may result under PC DC 3 when an applicant deliberately provides "false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination." Directive ¶ E2.A5.11.2.3.

PC DCs 2 and 3 are established by substantial evidence. He deliberately and intentionally gave a false answer to Question 27 of his October 20, 2003, SF 86, denying his cocaine use within the last seven years.[17] He admitted he did not disclose his illegal drug use because he was worried about his employment and security clearance. In his response to the SOR, he was not candid when he said the falsification was not deliberate or intentional.[18]

A security concern based on Guideline E may be mitigated by establishing by substantial evidence personal conduct mitigating conditions (PC MC). Under PC MC 1, security concerns may be mitigated when the "information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability." Directive ¶ E2.A5.1.3.1. PC MC 1 does not apply because the falsification was substantiated, deliberate, and it is relevant to a determination of judgment, trustworthiness and reliability.

PC MC 2 applies when the "falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily." Directive ¶ E2.A5.1.3.2. PC MC 3 applies when the "individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts." Directive ¶ E2.A5.1.3.3. Applicant receives some mitigation under PC MCs 2 and 3 because the only record evidence that Applicant failed to accurately report his drug use in his 2003 security clearance application was provided by Applicant in subsequent security interviews. Moreover, his false statement on his 2003 SF 86 is not particularly recent. However, his statement in response to the SOR fails to take full responsibility for the falsification, weighing against greater mitigation.

PC MC 4 applies when omission "of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided." Directive ¶ E2.A5.1.3.4. There is no evidence that such a circumstance as described in PC MC 4 occurred. Security concerns can be mitigated under PC MC

[17]The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

> (a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

[18]In ISCR Case No. 04-08934 at 2 (App. Bd. Aug. 17, 2006) the Board stated that an applicant's statements about his or her intent and state of mind when the SF 86 was executed were relevant but not binding information. Moreover, an applicant's statements are considered in light of the record evidence of a whole. *Id*. "The security concerns raised by an applicant's falsification are not necessarily overcome by applicant's subsequent disclosures to the government. *See* ISCR Case No. 01-19513 at 5 (App. Bd. Jan. 22, 2004)." *Id*.

5 when an applicant "has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress." Directive ¶ E2.A5.1.3.5. PC MC 5 may not be fully applied because the steps made toward rehabilitation are insufficient in magnitude and his response to the SOR fails to take full responsibility for the falsification, and understates the recency of his drug abuse. In sum, Applicant's October 20, 2003, false statement denying drug use during the last seven years reflects questionable judgment, untrustworthiness, and dishonesty.

"Whole Person" Analysis

In addition to the enumerated disqualifying and mitigating conditions as discussed previously, I have considered the general adjudicative guidelines related to the whole person concept under Directive provision E2.2.1. As noted above, Applicant's history of drug abuse, his actions concerning illegal drug use and drug sales, and the falsification of his 2003 security clearance application were knowledgeable and voluntary. He is 48 years old, sufficiently mature to be fully responsible for his conduct. The likelihood of future drug abuse remains substantial because insufficient time has elapsed since his last cocaine use, and Applicant has not provided sufficient corroborative evidence of a change in his lifestyle. Applicant's use of drugs while away from his work environment mostly at parties makes his conduct less aggravated, but the possibility remains of compromise of sensitive or classified information. Standing individually the falsification might be regarded as an isolated offense and somewhat remote in time. However, the false information on his 2003 SF 86 cannot be viewed in isolation. On April 19, 2006, he made a written statement admitting he did not provide the drug information on his SF 86 because he was concerned about losing his employment, and denial of his security clearance application. Then in his response to the SOR on September 22, 2006, he said the falsification was not deliberate and intentional. His failure to be forthright and to take full responsibility in his 2006 response to the SOR weighs against mitigating the falsification allegation.[19] A person who engages in "conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that [applicant] may not properly safeguard classified information."

Applicant presented substantial extenuating and mitigating evidence for his drug abuse. He stopped using drugs in October 2002 and desires to maintain his drug-free status in the future. He relies on religion to support his lifestyle change. He disclosed his extensive history of drug abuse in his 2006 interview. Applicant disclosed the only record evidence showing his drug abuse. The absence of evidence of any prior violation of her employer's rules or requirements, and his evident sincerity about making future progress weigh in his favor. Abstaining from drug abuse for almost five years shows significant evidence of his efforts to establish his responsibility and rehabilitation.

However, after weighing the disqualifying and mitigating conditions, all the facts and circumstances, in the context of the whole person, I conclude Applicant has not mitigated the security concerns pertaining to drug involvement and personal conduct. His falsification of his 2003 SF 86, and his failure to be more candid in his response to the SOR weighed most heavily in my

[19]The failure to provide a forthright response to the SOR may be considered as follows: "(a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3." ISCR Case No. 03-20327 at 3 (App. Bd. Oct. 26, 2006) (citing ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)).

determination.

The evidence leaves me with grave questions and doubts as to Applicant's security eligibility and suitability. I take this position based on the law, as set forth in *Department of Navy v. Egan,* 484 U.S. 518 (1988), my "careful consideration of the whole person factors"[20] and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under Enclosure 2 of the Directive. Applicant has failed to mitigate or overcome the government's case. I conclude Applicant is not eligible for access to classified information.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraphs 1.a to 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Mark W. Harvey
Administrative Judge

[20] *See* ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).